IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 145 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following four questions have been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of sectio 79 of the Income-tax Act, 1961, were not attracted and the assessee was entitled to reliefs of carry forward and set off of the unabsorbed business loss, depreciation, development rebate, investment allowance and also relief under section 80J of the Income-tax Act, 1961?

2. Whether the findings of the Appellate Tribunal that when the shares were acquired by the purchasers from Parekh Family the motive was not to avoid or reduce any tax liability is correct in law?

3. Whether the finding of the Appellate Tribunal that condition (b) was not being fulfilled and section 79 of the Income-tax Act, 1961 was not attracted is correct in law and sustainable from the material on record?

4. Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the order invoking the provision of section 79 of the Act, the department must prove not only there was a transfer of the shareholding of not less than 51% of the voting power as per clause (a) of section 79 but also that such a transfer was with the intent in reduce or avoid the tax liability as per clause (b) of section 79?"

2. We have heard learned advocate Shri B.B. Naik appearing for the revenue. Though served, nobody has

appeared for the respondent assessee.

3. Our attention has been drawn to the judgment delivered in case of CIT v. Ahmedabad Flexible Tube Mfg Co. Ltd., 210 ITR 86, which has been decided by this court in the case of the assessee itself. Looking to the judgment delivered in the said case, questions Nos. 1 and 4 are answered in favour of the assessee and against the revenue as the questions which have been referred to in the present reference and the questions which were referred to in the judgment referred to hereinabove are the same.

4. So far as questions Nos. 2 and 3 are concerned, it appears that the said questions have been referred to this court through some inadvertence as the said questions pertain to facts. Our attention has been drawn by learned advocate Shri Naik to the fact that even in the earlier year the Tribunal had declined to refer questions Nos. 2 and 3 to this court. The said fact is also borne out from the judgment delivered in case of CIT v. Ahmedabad Flexible Tube Mfg. Co. Ltd. (supra). In the circumstances, we decline to answer questions Nos. 2 and 3.

The reference thus stands disposed of of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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